

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF**

75-1291

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA

Appellee

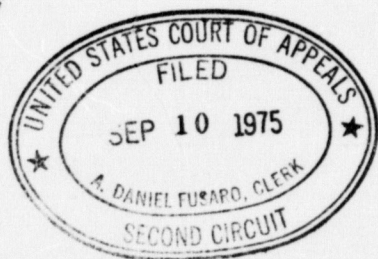
-against-

Docket No. 75-1291

VIRGIL P. RIVERS, JR., and EDWARD T.
COPELAND

Appellants
-----X

BRIEF ON BEHALF OF APPELLANT
EDWARD T. COPELAND
PURSUANT TO ANDERS V. CALIFORNIA



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PRELIMINARY STATEMENT UNDER
SECOND CIRCUIT RULE 28

The judgment herein was rendered after a jury trial before United States District Judge MARK A. COSTANTINO, in the United States District Court for the Eastern District of New York, which found the appellant, EDWARD T. COPELAND, guilty as charged in the indictment and judgment of conviction was entered on July 25th, 1975.

STATEMENT OF THE ISSUE

The sole issue in this case is whether there are any non frivolous issues on appeal.

STATEMENT OF THE CASE

The appellant COPELAND was indicted together with VIRGIL P. RIVERS, JR., on a three count indictment charging both with armed bank robbery and conspiracy to commit said crime in violation of Title 18 United States Code Sections 2, 371, 2113(a) and 2113 (d). Prior to the trial the court directed that a copy of an F.B.I. report of an interview with the defendant COPELAND to determine whether any problems existed with regard to statements of co-conspirators under UNITED STATES v. BRUTON 391, U.S. 123 (1968) be furnished to the court. On September 19, 1974, the court rendered a written opinion that no such problem existed. (App. P. 12).

Again prior to trial the court was furnished with a copy of two confessions of VIRGIL P. RIVERS, JR., and decided in a written opinion on June 5, 1975, that said confession of RIVERS was not violative of UNITED STATES v. BRUTON, supra. (App. P.13).

A hearing was held immediately before the trial and the confessions of both defendants were found to be voluntary and that the MIRANDA warnings were given.

Trial commenced on June 10, 1975. An individual who saw two men in a cab in front of the bank immediately prior to the robbery could not identify COPELAND. GAIL HARARI, the bank teller in the bank at the time of the robbery failed to identify either defendant. The operations officer at the bank, one ROBERT WIMS, who was present during the robbery failed to identify either defendant.

An F.B.I. agent, one WILLIAM J. AUGUSTITIS, testified that he arrested RIVERS and that RIVERS confessed to his participation in the bank robbery and said that COPELAND was present with him describing COPELAND'S part in the robbery. The court then permitted RIVERS' two written confessions into evidence as government's exhibit 7. (App. p.7). RIVERS' second written confession implicated COPELAND. On July 29th, some days later, the agent testified that he arrested COPELAND. At F.B.I. headquarters the agent testified that COPELAND orally admitted participating in the robbery but refused to name his accomplice or give a written statement. (TR. pp.329-333).

Niether defendant took the stand.

Both defendants, RIVERS and COPELAND, were found guilty as charged by the jury and each was sentenced to 15 years.

POSSIBLE ISSUES ON APPEAL

The only possible issue on the appeal is whether or not the introduction into evidence of the written confession of RIVERS, which stated that he held up the bank with COPELAND, violated the Constitutional rights of COPELAND.

RIVERS' two written confessions were received in evidence, the second of which outlined the details of his participation in the bank robbery together with the details of COPELAND'S participation. The same F.B.I. witness testified as to COPELAND'S oral confession to him in which COPELAND confessed to the same details as set forth in RIVERS' confession, the only variation between the two being that COPELAND refused to name his accomplice.

The question of confessions implicating a co-defendant has been the subject of attention by the courts, as the implicated co-defendant is deprived of his right to cross examination where the confessing defendant does not take the stand. In DELLI PAOLI v. UNITED STATES 352 U.S. 232 (1975) a confession implicating the co-defendant was held to be not violative of the petitioner's rights where the trial court admitted it with a cautionary instruction that it was not to be considered as to the guilt or innocence of anyone but the confessing defendant.

More realistically in BRUTON v. UNITED STATES, 391 U.S. 123 (1968) the Supreme Court expressly overruled DELLI PAOLI v. UNITED STATES, *supra*, by holding that the implicating confession added substantial weight to the government's case in a form not subject to cross-examination where the confessing defendant did not take the stand, and thus violated BRUTON'S constitutional rights.

The Second Circuit, however, has considered the "interlocking confession" situation which arises, as in this case, where both defendants confess and neither takes the stand as in this case. First, in UNITED STATES ex rel ORTIZ v. FRITZ, 476 F2d 37 (1973) this Court held that the admission of confessions of two co-defendants did not

vitiating defendant's murder conviction where defendant's own confession was also introduced in evidence and it "interlocked" with the confessions of his co-defendants. In ORTIZ there were what might be considered even substantial differences between the two co-defendants implicating confessions, but this Court held that although all of the confessions do not cover the same facts they did interlock. In ORTIZ one of the confessions fixed the crime at noon and the other at 9:00 P.M., but this Court held that did not take away the interlocking aspect.

In UNITED STATES ex rel STANBRIDGE v. ZELKER 514 F.2d 45 (1975), decided by this Court on April 15, 1975, the question of the degree of "interlocking" necessary was again considered. In STANBRIDGE there were again differences in the confessions. The implicating confession of the co-defendant stated that the petitioner had a gun and the petitioner denied this in his confession; the implicating confession stated that the confessing defendant loaded his gun before entering the store and the petitioner's confession stated that he was unaware that his accomplices were armed; the confessing defendant stated that he conferred with petitioner and his other companion before firing his gun, while petitioner's confession stated that the shooting took him by surprise.

Thus there were substantial differences, but this Court held that they interlocked.

In the instant case RIVERS second confession, admitted as government exhibit 7 in evidence, (App. P.7), stated that on July 15, 1974 COPELAND and he drove to the bank in a taxicab belonging to his employer. He stated that he was armed with a rifle and that COPELAND was unarmed. They entered the bank and while he

controlled the banking floor, COPELAND vaulted the counter and cleaned out the teller's drawers. They left in the taxicab and divided the \$3,000.00 loot at the Fort Greene Project, with his share \$1,500.00. They then discarded their clothes. The sawed off rifle was cut up and thrown in the East River from the Manhattan Bridge.

COPELAND'S oral confession as testified to by the F.B.I. agent was that COPELAND said he entered the bank with another individual on July 15, 1974. The other individual controlled the bank floor, and COPELAND said that he vaulted the counter and scooped the money out of the teller's drawers. He left the area in a yellow cab, drove to the Fort Greene Project where they divided the loot and discarded their clothes. He said the sawed off rifle was cut up and thrown off the Manhattan Bridge. (TR. p. 330). His share of the loot was \$1,500.00.

Thus the two confessions "interlock" on every detail except one. RIVERS' written confessions state that COPELAND was with him. COPELAND'S oral confession states that another individual was with him, but refuses to give his name.

Following the reasoning in OPTIZ and STANBRIDGE, the two confession in the instant case interlock even as to the small details of the actions of the defendants following the crime. The refusal of COPELAND to name RIVERS as his accomplice in his confession does not destroy the "interlocking" aspect of both confessions and therefore the confession of RIVERS was properly admitted into evidence. It did not violate COPELAND'S Constitutional rights fore the foregoing reasons.

There are no other questions of law which could be raised on appeal. All of the other issues were questions of fact which were resolved against this defendant by the jury. There are no non-frivolous issues on which to appeal.

CONCLUSION

For the above stated reasons, there are no non-frivolous issues which can be raised on appeal. Accordingly it is respectfully requested that JOHN C. CORBETT, be relieved as counsel on this appeal.

Respectfully submitted,

JOHN C. CORBETT,
Attorney for Appellant
COPELAND.